101ST CONGRESS 1st Session | HOUSE OF REPRESENTATIVES | REPORT 101-213

TELEPHONE OPERATOR SERVICE CONSUMER PROTECTION ACT OF 1989

AUGUST 3, 1989.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DINGELL, from the Committee on Energy and Commerce, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 971]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 971) to require the Federal Communications Commission to prescribe rules to protect consumers from unfair practices in the provision of operator services, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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29-006

The amendment strikes out all after the enacting clause of the bill and inserts a new text which appears in italic type in the reported bill.

PURPOSE AND SUMMARY

The purpose of H.R. 971 is to protect telephone consumers against unfair prices and practices of some operator service providers (OSPs), yet allow the legitimate companies in the industry the opportunity to compete in the market. H.R. 971 as amended and reported by the Energy and Commerce Committee requires the Federal Communications Commission to undertake two proceedings. First, the Commission is required to commence a rulemaking procedure to establish minimum standards for providers of operator services regarding consumer notification, proper pricing and billing practices and the consumer's right to access the carrier of their choice. Second, the Commission is required to initiate a proceeding to examine the operator service industry to determine if market forces are adequately protecting telephone consumers. Within nine (9) months after the beginning of this proceeding, the Commission must report to Congress. If the Commission concludes that market forces are not resulting in just and reasonable rates, which are required by the Communications Act, the FCC must establish regulations for the industry within 90 days.

BACKGROUND AND NEED FOR THE LEGISLATION

The AT&T divestiture and Federal Communications Commission policies promoting competition have resulted in the opening of many formerly restricted markets to new entrants. The provision of operator services area is one of these previously closed markets that has attracted new competitors. These new operator service providers (OSPs) are often referred to as alternative operator service (AOS) providers as they represent an alternative to the traditional provider. Currently, there are over 35 AOS companies competing in the United States. Alternative Operator Service providers have captured approximately 5 percent of the 12 billion dollar market for assisted telephone calls, including collect, person to person, telephone calling card, and other "Dial-0" calls.

With the breakup of AT&T and the dismantling of its vertically integrated monopoly, there are different providers of operator services for intrastate and interstate telephone calls. At virtually every telephone connected to the public switched network the customer can access the operator of the local telephone company, usually by dialing 0, who can assist the customer by placing intrastate intralata calls and by providing other services and information. These local intrastate operator services generally are still provided on a monopoly basis by the local exchange companies, and are not the focus of public concern nor of this legislation. They are under the jurisdiction of state regulators. Intrastate, interlata calls are not generally processed by the local telephone companies but are also regulated under the jurisdiction of state regulators.

In the interstate, interlata operator services market, competition has commenced among many well-known interexchange carriers and some less recognizable operator service providers. In these interstate markets, OSPs contract with businesses and institutions such as hotels, airports, hospitals, and universities to provide operator services, through privately-owned payphones or telephone facilities. For example, a hotel may sign a contract with an operator service provider, who will then connect to every hotel telephone, including the in-room phones, and complete all of the hotel patron's "Dial-0" interstate calls. Similar arrangements are made between OSPs and the owners of the approximately 2.0 million public telephones in the United States, of which about 1.75 million are owned by Bell Operating Companies (BOC's) and other local exchange carriers (LEC's).

These businesses and institutions select the operator service provider who is connected to their publicly available phones. In most instances, the OSPs pay a commission to these telephone owners—frequently as high as 20 percent—for allowing the OSP companies to provide operator services, including completion of the interstate call, for their business or institution. These businesses and institutions are commonly referred to as "call aggregators."

The OSPs who assist the telephone customers with collect, person to person, credit card, third-party billing and other "Dial-0" interstate calls complete the interstate calls through the use of their own facilities or by reselling the services of traditional interexchange providers. Alternative operator service providers lease telephone lines from major carriers, such as AT&T, NTN, US Sprint and MCI, and utilize these lines to connect the customer to their operator services centers and to complete the customers' inter-exchange calls. At a telephone served by a provider, callers making operator-assisted telephone calls are routed to that AOS company's operator service center via an automatic redialer or dedicated private line. From the operator center the automated or live operator gathers the calling and billing information and then completes the call over lines and other facilities leased from major carriers.

Additionally, some AOS providers sell other operator services, including voice messaging and multilingual services. AOS companies generally establish contracts with local exchange companies (LECs) for the billing of customers and collecting payments for AOS companies. Calls billed to a local telephone company's credit or calling card as well as collect and 3rd party billed calls generally appear on the customer's local monthly telephone bill.

Since the FCC classifies these AOS providers as "non-dominant" or carriers with market power, the Commission currently does not regulate their rates. Therefore, each AOS company sets its own rates, which often include a commission for the aggregator, and in some cases, an additional per-call surcharge. These surcharges—assessed on behalf of the call aggregator—are collected either directly by the call aggregators (such as a $1.00-per-call hotel surcharge added to the customer's hotel room bill) or by the AOS provider as a separate line charge collected through its billing contract.

Consumer Complaints

The onset of competition for the provision of operator services and emergence of AOS providers has spawned confusion and complaints among consumers. From January 1988 to February 1989, the Federal Communications Commission received over 2,000 complaints regarding AOS providers. Numerous others have been received by state Public Utilities Commissions and Congressional offices. Many complaints center on the fact that consumers are unaware of the existence of the numerous AOS companies and their functions. In many cases, consumers complained that they were not informed by the telephone owner or the AOS company that their call was handled by someone other than the traditional dominant service provider (the LEC or AT&T), and that the charge for the call was significantly higher than that charged by AT&T. One complaint filed with the Commission reported a caller who made a call from a Florida hotel to Connecticut using an AT&T calling card. The man was billed $27.53 for a 27-minute call, which would have cost $4.60 if handled by AT&T.

Adding to the consumer's confusion is the fact that the AOS companies accept AT&T telephone calling cards for payment. AT&Ts cards utilize a shared data base with the Bell Operating Companies' (BOCs) calling cards. Since the AOS provider accepts the AT&T calling card, the uninformed consumer often mistakenly presumes that his call is being completed by AT&T. The consumer is further confused when the monthly telephone bill contains a charge from a little known AOS provider when the consumer thought the call was carried by AT&T.

Even knowledgeable consumers have complained about the practices of some AOS providers. In many locations, consumer's efforts to use the Commission's assigned access codes to reach their preferred long distance carrier are blocked by the AOS provider's or the call aggregator's equipment. When the AOS provider or the aggregator deny consumers access to their preferred carrier, the only way a consumer can reach the carrier of his choice is to use another telephone.

This "blocking" is an even more serious problem at isolated or restricted locations such as airports or in hospitals, where all of the telephone equipment is presubscribed to one OSP. In these instances, the consumer is truly captive, and has no other choice than the services—and rates—of the aggregator's preselected OSP.

Another reason for consumer complaints is the practice of "call splashing." This occurs when the AOS company transfers a call to another carrier at a point distant from that in which the caller is located. For example, a customer at a pay telephone in Nashville that presubscribed to an AOS provider may ask to be connected to an AT&T operator to call Memphis. The AOS operator located at the AOS operator center in Atlanta then transfers the caller to the nearest AT&T operator in Atlanta. Since AT&T is unaware of the origin of the call, it simply treats it as a call between Atlanta and Memphis. Therefore, the customer is charged for an Atlanta to Memphis call even though the call originated in Nashville and terminated in Memphis.

Call splashing also occurs when a customer requests the AOS provider to charge a call to a telephone number in a location where the AOS provider does not have a billing arrangement with the LEC, or where the LEC does not provide information to validate the authenticity of the telephone number. The AOS providers' inability to obtain billing and collection services and call validation data from many independent local exchange carriers is not only a factor in call splashing but also contributes to the increased cost of operator-assisted services for many interexchange carriers. The unavailability of billing and collection service and validation data means that AOS providers lose revenues on many calls that have to be transferred to another carrier, while incurring charges for the facilities used in transferring the calls. These increased costs and lost revenues, however, are ultimately recovered from operator services provider's customers.

Prompted by numerous consumer complaints, two nonprofit consumer advocacy groups, Telecommunications Research and Action Center (TRAC) and Consumer Action (CA), filed formal complaints with the FCC on July 26, 1988 against five Alternative Operator Service provider companies: Central Corporation, International Telecharge, Inc., National Telephone Services, Pay Line Systems, and Telesphere Network. TRAC and CA charged that these Alternative Operator Service Providers violated the Communications Act by charging rates that exceeded those of AT&T by as much as 250 percent, and by denying consumer access to their preferred carriers.

Specifically, the complainants argued that the five AOS companies have market power, as defined in the FCC's *Competitive Carrier* decision, since callers at a hospital or university are without alternatives to the AOS services and rates. Therefore, the complainants contended these AOS providers' rates should be regulated as dominant carriers. As dominant carriers, the defendants are providing services without the authorization pursuant to the Communications Act.

Additionally, the complainants asserted that the defendants' rates and practices are unjust and unreasonable and violate Section 201(b) of the Act. In *Competitive Carrier*, the Commission held that the underlying carrier's rates operate as a "just and reasonable" ceiling on the reseller's rates, and that reseller must not price its services above those of the underlying carrier. The consumer groups requested that the Commission find the named AOS providers to be dominant carriers; revoke any operating authority under which the defendants are now operating; order them to cease and desist from offering service; and find that the defendants' rates and practices, such as call blocking and splashing, are unjust and unreasonable.

The defendants responded that they are not dominant carriers, since they do not possess control or market power over any bottleneck facility. Therefore, under *Competitive Carrier*, their rates are not unreasonable, and they do not engage in any unlawful practices. further, the AOS companies asserted that their presence in the market place is procompetitive. they claim that they provide innovative services that the traditional service providers do not, including the capability to bill calls to bank credit cards, the use of multilingual operators, and the offering of voice messaging and voice mail services.

FCC Action

On February 24, 1989, the FCC granted the complaint only in part (FCC DA 89-237). The Commission found that the absence of consumer disclosure, coupled with call blocking and call splashing, constituted unreasonable practices. In 1989 the Commission ordered the following forms of relief:

1. The defendant AOS companies must provide consumer information to their customers in the form of tent cards, telephone stickers, or some other form of printed documentation that can be placed on, or in close proximity to, all presubscribed telephones. These materials must list the company's name, address, and a customer service telephone number for the receipt of further information. The posted material must also state that the company's rates are available upon request.
2. The contracts AOS companies sign with call aggregators must contain provisions requiring aggregators to display the consumer information materials on, or in close proximity to, all presubscribed telephones. All existing contracts with call aggregators must be amended to reflect these requirements within sixty days of the Order.
3. The AOS companies must identify themselves to the caller before a call is connected. This identification must be followed by a delay of sufficient duration to permit the caller to hang up and/or advise the operator to transfer the call to the consumer's preferred carrier.
4. The AOS companies must discontinue the practice of call blocking immediately.

The Commission also stated its concern over call splashing. The Commission suggested that a solution could be found through the cooperation of the Bell Operating Companies (BOCs) and AT&T on an industry-wide basis. The Commission required the AOS companies to bring the matter before the Carrier Liaison Committee (CLC) of the Exchange Carrier Standards Association.

However, the Commission failed to find the AOS rates "unjust and unreasonable" as the "quantity and quality of services vary among carriers as do their underlying cost structures, all of which could support significant differences in rate levels." Furthermore, the FCC has refused to regulate AOS rates because doing so would violate the Commission's long-standing policy of regulating only those companies with market power. The FCC found that these AOS companies were not in position to monopolize any market. The FCC contends that well informed consumers can make intelligent choices, allowing market forces to lower prices, and noted that some AOS rates are already below those of AT&T.

TRAC has argued that the FCC regulations were unsatisfactory, since they did not address AOS exorbitant rates. Furthermore, the group expressed concerns that the Commission's actions may not be applicable to AOS companies that were not specifically named in the complaint.

Several state regulatory authorities have taken actions somewhat similar to those in the Commission's ruling to protect customers using intrastate operator services; some have gone even further. The National Association of Regulatory Utility Commissioners (NARUC) adopted its Resolution Regarding Additional Guidelines for Alternative Operator Services on March 1, 1989. One of its provisions called for the NARUC General Counsel to petition the FCC to open a formal rulemaking proceeding into the practices and appropriate regulatory treatment of AOS. It also indicated NARUC's support for H.R. 971.

SUMMARY OF LEGISLATION

The Act requires that, within 30 days of enactment, each operator service provider must file, maintain and keep open for public inspection, informational tariffs which specify the rates, terms and conditions for their services. The FCC is instructed to review these informational tariffs and require that any operator service provider, whose rates appear unjust or unreasonable, to demonstrate that its rates and charges reflect the reasonable cost of providing the service, plus a reasonable profit.

In addition, the legislation initiates two formal FCC proceedings. The first would be a rulemaking that would extend and expand the Commission's earlier order on AOS providers. The legislation's provisions would require that the FCC establish rules requiring AOS providers to:

1. Audibly identify themselves to the consumer prior to the consumer incurring any charges and permit the consumer to terminate the call at no charge;
2. Ensure that each contracted call aggregator post on or near the telephone, in plain view of consumers, the name, address, and toll-free number of the provider, and a disclosure stating that the caller has the right to access their preferred interstate common carrier;
3. Disclose, on request, it rates, collection methods, and complaint resolution practices to the consumer;
4. Refrain from blocking access to the consumer's preferred interstate common carrier, and assure, by contract, that its aggregators neither require nor participate in the blocking of such calls;
5. Install, or retrofit, equipment that is technologically capable of providing consumers with access to the carrier of their choice within 18 months.
6. Prohibit the AOS provider from knowingly charging for incompleted calls; ensuring that the AOS provider does not charge for more than the distance, in a straight line, between the points or origination and termination of the calls; and billing a consumer's telephone call at the rate of the common carrier whose credit card is utilized by the consumer.
7. Establish minimum standards for the routing and handling of emergency telephone calls by operator service providers; and
8. Make public information about recent changes in operator services and choices available to consumers in the market.

In the second proceeding, the Commission would be required to examine the operator service industry for a 10-month period after enactment and, based on its findings, determine whether mandatory regulation of the entire industry is warranted. The Commission's examination would specifically focus on operator service rates and offerings and include an assessment of service quality, technological innovation, cost of service, and incidents of service complaints.

HEARINGS

The Committee's Subcommittee on Telecommunications and Finance held one hearing on H.R. 971 on April 5, 1989. Testimony was received from 9 witnesses, representing the Federal Communications Commission, the Tennessee Public Service Commission, the Telecommunications Research and Action Center, International Telecharge Incorporated, the Communications Workers of America, AT&T, National Telephone Service, and the Operator Service Providers of America. In addition, the American Public Communication Council submitted a statement for the record.

COMMITTEE CONSIDERATION

On May 24, 1989 the Subcommittee on Telecommunications and Finance met in open session and ordered reported the bill H.R. 971, as amended, by a voice vote, a quorum being present. On June 27, 1989 the Committee met in open session and ordered reported the bill H.R. 971 with an amendment by voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, no oversight findings or recommendations have been made by the Committee.

COMMITTEE ON GOVERNMENT OPERATIONS

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that the cost incurred in carrying out H.R. 971 would be $500,000 in the first year and $200,000 per year thereafter.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 27, 1989.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce,
U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 971, the Telephone Operator Service Consumer Protection Act of 1989, as ordered reported by the House Committee on Energy and Commerce, June 27, 1989. We expect that implementation of the bill would cost the Federal Communications Commission (FCC) about $500,000 in fiscal year 1990 and about $200,000 annually thereafter. Additional costs of $500,000 to $1 million a year beginning in fiscal year 1991 would be incurred if the FCC determines that the rates for operator services are not just and reasonable. FCC funding is subject to appropriation action.

H.R. 971 would require the FCC to prescribe regulations to protect consumers from unfair and deceptive practices of telephone operator services. Specifically, the FCC would have to initiate a rulemaking proceeding to place certain requirements on providers of operator services, and providers of an operator service would have to supply certain information to consumers using the service, such as the name of the firm and the rate charged for the call. In addition, the bill would require the FCC to monitor the rates that are charged by operator services. If the FCC determines that market forces are not producing just and reasonable rates, then the FCC would have to establish regulations to ensure that rates for operator services are just and reasonable.

Based on information from the FCC, CBO estimates that the rulemaking proceedings would cost about $300,000 in fiscal year 1990. The monitoring and enforcement of the requirements placed on providers of operator services would cost about $200,000 annually beginning in fiscal year 1990. Additional costs would be incurred only if the FCC determines that the rates for operator services are not reasonable. Additional hearings and monitoring could cost the FCC between $500,000 and $1 million annually beginning in fiscal year 1991. We expect that the other provisions of the bill would have no significant budget impact.

No costs would be incurred by state or local governments as a result of enactment of this bill.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Douglas Criscitello, who can be reached at 226-2860.

Sincerely,

ROBERT D. REISCHAUER, *Director.*

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee makes the following statement with regard to the inflationary impact of the reported bill: The legislation will have no inflationary impact.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 2. Findings

Section 3. Rulemaking required

(a) Initiation of Rulemaking.—Within 30 days, the FCC shall begin a rulemaking to establish regulations to protect consumers of operator services in the long distance market.

(b) Timing and Contents of Regulation.—Following enactment, the FCC shall prescribe title II regulation within 120 days to meet the minimum requirements set forth below. The regulations will take effect 90 days from their issuance.

Section 4. Minimum requirements

The Committee expects that the Commission treat the requirements of this Section as minimum actions and take whatever further measures that are necesary or appropriate.

Section 4(a)(1) stipulates that the FCC's regulations must require the AOS provider the audibly identify itself prior to the consumer incurring any charges and permit the consumer to terminate the call at no charge.

Section 4(a)(2) stipulates that the FCC's regulations must require the AOS provider, by contract or tariff, to ensure that each aggregator post on or near the telephone, the plain view of consumers, its name, address, toll-free number, and a notice that the caller has the right to access their preferred interstate common carrier.

Section 4(a)(3) stipulates that the FCC's regulations must require the AOS provider to disclose at the consumer's request its rates, collection methods, and complaint resolution practices.

Section 4(a)(4) stipulates that the FCC's regulations must require the AOS provider to refrain from blocking access to the consumer's preferred interstate common carrier, and to assure, by contract or tariff, that its aggregators neither require nor participate in the blocking of such calls. The FCC may grant limited, temporary waivers to particular AOS providers for a particular access code upon a showing that such a waiver is necessary to prevent fraud.

In order for the OSP to be in compliance with this paragraph, aggregators may not block a consumer's access to interstate interexchange carriers through the use of access codes approved by the Commission. At present, these access codes include feature group B carrier identification codes, feature group D carrier identification codes, and the universal 800 code.

This paragraph permits the Commission to grant temporary limited waivers of the section's requirements only after a showing that such a waiver is necessary to prevent fraud. The waiver should be allowed when access is limited as a result of technical inadequacies of the equipment or the network. These waivers should not be granted indefinitely. The OSP has a responsibility to make every reasonable effort to comply with this section and influence the aggregator to unblock its equipment.

Section 4(a)(5) stipulates that the FCC's regulations must require any equipment manufactured or imported more than 18 months after the date of enactment of this Act and installed by an aggregator to be technologically capable of processing all access codes approved by the Commission for gaining access to interstate interexchange carriers. The record before the Committee reflects that most equipment used by aggregators is capable of providing, and generally allows, access to interstate interexchange carriers accessed through 800 numbers, 950-XXXX, and other seven and ten digit access codes containing standard prefixes. However, much of the equipment used by aggregators is technologically not capable of providing access to carriers accessed through the 10XXX access code. This provision will ensure that the technological limitations of available equipment do not form a barrier preventing aggregators from allowing access to all interstate interexchange carriers.

At the same time, the provision recognizes that this technological change cannot be accomplished overnight. Section 4(a)(5) allows an 18 month transition period for manufacturers to make the necessary adjustments. Any equipment manufactured less than 18 months after enactment of this Act is not affected by this provision. This will allow manufacturers to meet continuing demand and deplete remaining inventories manufactured while the new capability is being brought into the production process.

In order to allow the full 18-month transition period for manufacturers to design, develop and produce equipment that can process all interstate interexchange carrier access codes, Section 4(a)(5) requires that equipment manufactured more than 18 months after the date of enactment be able to recognize those interstate interexchange carrier access codes that have been approved by the FCC at the time of enactment of this Act. This is clear from the structure of the Act; the FCC is directed to conduct a rulemaking under the Act and, in that rulemaking, to require that all interstate interexchange carrier access codes approved by the Commission at that time be accessible through equipment used by aggregators. If the FCC approves different interstate interexchange carrier access codes or adds interstate interexchange access codes 15 months (for example) after enactment of this Act, this Section does not require that equipment manufactured 3 months later be technologically capable of processing these different or additional access codes. The Commission has ample authority to address the accessibility of these different or additional interstate interexchange access codes as they are approved.

Section 4(a)(5)(B) requires the FCC to adopt regulations requiring that equipment already in use be upgraded to be techonologically capable of processing all interstate interexchange carrier access codes approved by the Commission, i.e., to have the same capabilitiy as equipment covered by section 4(a)(5)(A). However, in recognition of the fact that there may be equipment for which upgrading is not cost-beneficial, the FCC is authorized to provide waivers of this requirement for any class or category of equipment where it finds that the benefits of applying the requirement do not justify the costs.

The requirements of Section 4(a)(5)(B) apply to repaired, refurbished or resold equipment. This is consistent with the purpose of Section 4(a)(5), which is to have all equipment technologically capable of allowing consumers to access all interstate interexchange carriers through FCC-approved access codes.

By this Act, Congress is taking steps to ensure that aggregators provide consumers with access to the interstate interexchange carrier of their choice. At the same time, aggregators make a valuable contribution by making telephones publicly available to consumers for access to the interstate network. The Committee recognizes that publicly available telephones are particularly vulnerable to fraud. Section 4(a)(5)(C) recognizes that, to minimize their exposure to fraud, aggregators will require the cooperation of telephone companies and interstate interexchange carriers. While the telephone companies and interstate interexchange carriers have no interest in promoting fraud, there may be little incentive for them to prevent aggregators from being defrauded, so long as they can collect the charges for the calls from the aggregators. This provision therefore directs the Commission to take necessary steps, including requirements for local telephone companies and interstate interexchange carriers to take appropriate actions, that would prevent exposure of aggregators to undue risk of fraud.

Section 4(a)(6) stipulates that the FCC's regulation must require the AOS provider to refrain from knowingly charging for incompleted calls, and prevent consumers from being charged for more distance than the direct distance, between the origination and termination points of the call, or from billing a telephone call on a billing card provided by an interstate common carrier at a higher rate than that carrier for the call, unless the consumer consents to a different rate, or requests a special non-tariffed service.

It is the Committee's expectation that the Commission will act upon the recommendations of the Carrier Liaison Committee to ensure that the billing practice known as "call splashing" ends. Consumers should not be charged for any distance other than the distanced, in a straight line, between call's points of origin and termination.

The provisions contained in this section regardiang the billing for calls made utilizing a billing card are not intended to constrain an OSP from billing at a rate different from the rate charged by the underlying interexchange carrier when a consumer bills a call to local exchange carrier-issued billing card.

Subparagraph (C) of paragraph (6) provides that the Commission shall establish regulations on the rates at which consumers may be billed. The provision requires that consumers using a billing card issued by an interstate interexchange carrier which permits the identification of that carrier shall not be charged at a rate which is greater than the rate of the interstate interexchange carrier who issued the card. The term "interstate interexchange common carrier" used in Section 4(5)(C) does not include local exchange common carriers. Moreover, it is the Committee's intention that identifiable billing cards do not include billing cards which are in shared databases such as the Billing Validation Application database.

It is also the Committee's intention that such requirements do not impose any unnecessary burden on providers of operator services. Further, an interstate interexchange common carrier should not misuse this section by issuing a card which identifies the carrier but is otherwise unlawful under the Communications Act. The

Committee does not require the OSP to accept for payment any particular billing card. In addition, with the customer's consent, the OSP may charge a rate different from that of the carrier issuing the billing card.

The Committee also recognized that, due to the miltiple types of billing plans used by various interexchange common carriers, the charge for a call may vary for that carrier according to the person making the call. It is expected that the Commission will determine the most appropriate solution to this problem.

Furthermore, the Committee recognizes that billing cards which are in databases that are not shared may permit the identification of the carrier issuing the card but may not permit validation or billing with reasonable reliability and at a reasonable cost. The Commission, therefore, should consider this problem in establishing the requirements under this section.

Section 4(a)(7) stipulates that the FCC's regulations will establish minimum standards for the routing and handling of emergency telephone calls.

Emergency service (911 or equivalent) is generally provided by the local exchange carriers. It is expected that they will continue to offer these services under existing tariffs. Any technical problems that inhibit the expeditious and efficient handling of these emergency calls should be worked out in existing technical forums.

Section 4(a)(8) requires the FCC to establish a policy requiring common carriers to make public information about recent changes in operator services and choices available to consumers in the market, and consider the need to prescribe compensation for owners of competitive public pay telephones for calls routed to carriers other than the designated provider of operator services.

Section 4(b) directs the Commission, in conducting the rulemaking required under the Act, to consider the need to prescribe compensation (other than advance payment by consumers) to competitive payphone providers for calls routed to carriers other than the provider of operator services designated by the competitive payphone provider. Under the current system, the competitive payphone, provider is compensated for calls routed to the designated provider of operator services by that carrier. However, when a consumer uses an interstate interexchange carrier's access code, such as 10XXX, 950–XXXX, or 800 number, to access the carrier from a competitively provided public payphone or the call is otherwise routed to a carrier other than the designated provider of operator services, the owner of the phone typically receives no compensation. The local exchange carriers include their public telephones in the rate base on which they earn their authorized rate of return, and are therefore compensated for all use of the phone.

The provision prohibits the Commission from prescribing or allowing the compensation to competitive public payphone providers for such calls to be collected by advance payment by consumers. Requiring consumers to pay in advance for such calls would disrupt consumer habits and could defeat the purpose of non-sent paid calling, as well as competitively disadvantage competitive providers of public payphones.

Section 5. Determinations of rate compliance

Section 5(a) stipulates that the FCC must require providers of operator services to file, maintain and keep open for public inspection informational tariffs with the Commission. This section also states that such tariffs shall specify rates, terms and conditions which includes commissions, surcharges and other fees. In order to meet the requirements of this section, it is not necessary that operator service providers file tariffs which meet all of the requirements of part 61 of the Commission's rules. Instead, such filings must provide information which informs the consumer of the rates and charges for services and, in general, the terms and conditions of service. If commissions are included in the rates, it is not necessary to file such commissions separately. Operator service providers can also meet the requirements of this section by filing the range of surcharges which are collected on behalf of the call aggregator. However, unless the OSP provides information to the contrary, the Commission may assume that the highest surcharge of the range applies in all cases in its review of the OSP's informational tariff. Furthermore, it is not necessary to file informational tariffs or changes to those tariffs before they become effective. Instead, they must be filed with the Commission within a reasonable time thereafter. It is not the Committee's intention to change the filing requirements for dominant interstate interexchange carriers.

Section 5(b) requires that if upon review of the schedules filed pursuant to subsection (a) the Commission considers the rates and charges of a provider of operator services to be unjust and unreasonable, the Commission shall require the provider of operator services to demonstrate that its rates and charges are just and reasonable by providing convincing evidence that they reflect the reasonable costs of providing the service plus a reasonable profit. An operator service provider is not required to demonstrate that its rates and charges are just and reasonable on the basis of traditional rate-based, rate of return regulation, but instead must demonstrate that its rates and charges reflect their reasonable costs of providing service plus a reasonable profit. This subsection is not intended to imply that carriers which have been traditionally subject to rate of return regulation are no longer subject to such regulation.

Section 5(c) establishes the procedure by which the FCC must implement this section. Within 30 days of enactment, the FCC shall begin a proceeding to monitor AOS rates; to evaluate whether AOS services are better in service quality, price and innovation than services offered before AOS providers existed; to assess AOS rates, costs of service, complaints and service offerings in the aggregate and individually; and to consider the effect that commissions and surcharges have on consumer prices.

Not later than 9 months after commencement of the proceedings, the FCC shall report findings and conclusions to Congress. The FCC shall also give Congress quarterly progress reports on the proceeding.

If the FCC makes a factual determination that market forces are securing just and reasonable rates and practices for consumers, rate regulation pursuant to this section is not required.

Unless the FCC makes the determination in subsection (c)(3), the FCC shall complete a rulemaking within 90 days on how to establish rate regulation for the industry to ensure that AOS rates are just and reasonable.

Section 6. Definitions

(1) "Commission" means Federal Communications Commission.

(2) "The Act" means the Communications Act of 1934.

(3) "Consumer" means a person using operator services to make a long distance telephone call.

(4) "Operator Services" means a long distance service that offers billing assistance (live or automatic) or call completion aid to consumers; it does not include automatic billing to the telephone from which the call originated or billing to carrier specific access codes to prearranged accounts.

(5) "Aggregator" means anyone that makes telephones available to the public for operator-assisted long distance telephone calls.

When the Committee uses the term aggregator, it means those who make telephones commercially available. In most of these cases the owners of the telephone receive a commission or compensation from the OSPs for calls delivered from those telephones to those OSPs. The Committee did not intend to include those who make telephones available to visitors as a courtesy.

ADDITIONAL VIEWS ON H.R. 971, THE TELEPHONE OPERATOR SERVICES CONSUMER PROTECTION ACT

We fully support the Committee's approval of H.R. 971, as amended. The bill and the accompanying Committee Report provide explicit guidance to the Federal Communications Commission (FCC) on the regulatory structure the Committee expects to be implemented for the operator services provider (OSP) industry. We write separately because we also believe that in developing a regulatory scheme for OSPs, the Commission should look closely at the effects on OSP rates of current billing, collection, and validation practices in the telephone industry.

In the debate over H.R. 971, a great deal of attention was focused on the differences between the rates charged by some competitive operator service providers and those charged by AT&T. However, as the FCC focuses on the differences in OSP rates, it also should examine closely one of the principal causes—differences in the underlying costs borne by these carriers. OSPs are wholly dependent on local exchange carriers (LECs) for validation of calling cards and telephone company accounts and in the provision of billing and collection for their calling card, collect and third party billed calls. These services are used in conjunction with more than 95 percent of their traffic. Billing, collection, and validation in "dial 0" calling appear to exhibit the same "bottleneck" characteristics as local access service in direct dial long distance. Independent operator service providers cannot expect to enjoy the same economies of scale that AT&T enjoys. Nevertheless, they should not be subjected to discriminatory pricing or inferior services by LECs.

The disparities in the cost per call of local telephone company charges for billing and collection and validation services between competitive operator service providers and AT&T could serve to prevent new competitors from operating on a level playing field and inhibit the development of effective competition. Operator service competitors may be disadvantaged in three ways: (1) disparities in pricing for validation; (2) disparities in pricing for billing and collection services; and (3) disparities in limits on the availability of billing and collection services. The cumulative effect of these higher costs and inferior access arrangements could be (and often is) devastating to those who wish to offer new services in competition with an entrenched dominant provider.

U.S. District Court Judge Harold H. Greene, who oversees the AT&T divestiture decree, recently ordered the Bell Operating Companies (BOCs) to provide all interexchange carriers with validation data on the same rates, terms, and conditions that they provide to AT&T. A determination of the appropriate method for such access is currently under review by the Court. The Commission should consider whether requiring all LECs to provide validation data and services on a nondiscriminatory basis in a manner similar to the Court's order would have a significant effect on OSP rates.

There also appear to be substantial differences among the BOCs in their charges for virtually identical billing and collection services. For example, OSPs contend that billing and collection rates to competitive operator services providers range from a low of about 25 cents per bill and 4 cents per call (Pacific Telesis) to a high of around 55 cents per bill and 15 cent per call (NYNEX). Moreover, many BOCs appear to offer volume discounts for which few carriers—possibly only AT&T—could qualify and which result in a lower per call price for billing and collection services. Such a result clearly would be untenable under the Commission's access charge scheme, in which all carriers pay charges based on uniform, undiscounted rates for local exchange access. Billing and collection services for the "dial 0" industry are also a part of exchange access; discounts that result in competitive advantages for one or more OSPs should be examined closely for their possible anti-competitive effects.

Finally, it has been reported that many independent LECs will not agree to billing and collection arrangements with any carrier except AT&T. We understand that of the approximately 1,400 independent LECs in the U.S., less than half make available billing and collection services. The Commission should consider the effects of arrangements of this kind on the provision of operator services at costs similar to AT&T's.

The disparities in the costs for validation, billing, and collection services appear to give the existing carrier certain inevitable advantages in the market for operator services. Some of these issues are being examined by the court overseeing the AT&T divestiture decree, and by Congress in examining legislation that contemplates removing the Court's jurisdiction. However, that situation should not deter the FCC from examining these problems directly. Eliminating pricing disparities of this kind wherever necessary and appropriate would help to assure that all OSP rates are as low as possible.

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